



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012-2713

LLOYD W. PELLMAN  
County Counsel

September 17, 2003

TDD  
(213) 633-0901  
TELEPHONE  
(213) 974-1904  
TELECOPIER  
(213) 687-7300

**VIA Molly\_dwyer@ca9.uscourts.gov & U.S. MAIL**

Ms. Cathy Catterson  
Clerk of the Court  
United States Court of Appeal for the Ninth Circuit  
P.O. Box 193939  
San Francisco, California 94119-3939

Attention: THOMAS, En Banc Coordinator

**Re: SVREP, et al. v. Shelley, Case No. 03-56498  
(D.C. No. CV-03-05715-SVW)**

**Motion to File Amicus Brief; Declaration of Conny B.  
McCormack**

Dear Ms. Catterson:

Pursuant to the Order of the En Banc Coordinator filed September 16, 2003, in the above-entitled matter (copy attached), the County of Los Angeles hereby submits the declaration of the Los Angeles County Registrar-Recorder/County Clerk ("Registrar"), Ms. Conny B. McCormack, as a friend of the Court, on the question whether or not this case should be reheard en banc.

In view of the unprecedented urgency of this matter as reflected in the Order of the En Banc Coordinator, the County of Los Angeles respectfully requests that this letter be deemed a motion for leave to file an amicus-curiae pursuant to Federal Rules of Appellate Procedure, Rule 29.

Los Angeles County Registrar is the elections official for the largest voting jurisdiction in the State of California with approximately 4 million registered voters. Her declaration is offered to assist the En Banc Court in making a determination as to whether rehearing should be granted.

The declaration provides insight into the complexities of administering the recall election in conjunction with the March 2, 2004, primary election, as would be required if the panel's decision is not reviewed.

An amicus brief is desirable in this matter as neither the District Court nor the Court of Appeal has had the opportunity to understand the impact on the Registrar's ability to administer an election in March of 2004.

Respectfully submitted,



LLOYD W. PELLMAN  
County Counsel

**Attachments**

c: Attached Service List

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

SEP 16 2003

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

SOUTHWEST VOTER REGISTRATION  
EDUCATION PROJECT; SOUTHERN  
CHRISTIAN LEADERSHIP  
CONFERENCE OF GREATER LOS  
ANGELES; NATIONAL ASSOCIATION  
FOR THE ADVANCEMENT OF  
COLORED PEOPLE; CALIFORNIA  
STATE CONFERENCE OF BRANCHES,

Plaintiffs - Appellants,

v.

KEVIN SHELLEY, in his official capacity  
as California Secretary of State,

Defendant - Appellee,

TED COSTA,

Intervenor-Appellee.

No. 03-56498

D.C. No. CV-03-05715-SVW

**ORDER**

Before: THOMAS, En Banc Coordinator.

The parties, including the intervenor, shall file simultaneous briefs, not to exceed 15 pages or 7,000 words, setting forth their views on whether or not this case should be reheard en banc. The briefs shall be filed with the Clerk no later than Wednesday, September 17, at 2:00 p.m., P.D.T. The briefs may be filed in

**letter format and shall be sent to the Court electronically.**

**Issuance of the mandate will be stayed pending further order of this Court.**

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1           6.       Like the punch card voting system, the InkaVote system which the County of Los  
2 Angeles will be using in the March 2, 2004 primary election has a limited ballot capacity of 12 (twelve)  
3 pages to list candidates and ballot measures. The recall election with 135 candidates takes up eight  
4 pages. If the recall election were consolidated with the primary election the number of pages required to  
5 print the contests scheduled for the primary election for President, Congress, State Senate, State  
6 Assembly, the Board of Supervisors, Judges, etc., plus various ballot measures, would exceed the 12-  
7 page capacity of the InkaVote system.

8           7.       Holding the regularly scheduled primary election in March 2004, in conjunction with the  
9 recall election, would require Los Angeles County to use two different voting systems in the same  
10 election, InkaVote System coupled with some other type of paper ballot system. Using two different  
11 systems at the voting precincts has never been done before in Los Angeles County. One hundred  
12 percent of the voters in Los Angeles County will be confronted with the challenge of learning how to  
13 use the new voting system, InkaVote, in the primary election. To require voters to master the use of two  
14 unfamiliar voting systems at the same election invites confusion and ballot errors.

15           8.       Currently, Los Angeles County does not have a system in place that could handle the  
16 capacity required for the March primary to be combined with the recall election. Los Angeles County  
17 would have to acquire additional equipment to accommodate the candidates/contests in both elections.

18           9.       Another complexity of conducting the recall election at the same time as the primary  
19 election is that for California's closed primary election voters must declare their political party  
20 affiliation prior to voting. This declaration is made in order to receive the correct ballot for the political  
21 party with which the voter is registered. We have seven different political parties, with seven different  
22 ballots, i.e. democrat, republican, libertarian, et. cetera. However, the recall election is a general  
23 election with numerous partisan candidates and every voter may vote across party lines for his/her  
24 choice for governor. Attempting to combine these two totally different types of elections has never  
25 been done before and would, in my opinion, result in significant voter confusion and enhanced potential  
26 for error.

1 10. Should the recall election proceed on October 7, 2003, the ballot will be relatively  
2 simple. Voters will have a maximum of four selections to make, and, in Los Angeles County, voters  
3 would be using the punch card system which has been used for voting here for the last 35 years.

4 11. For the recall election scheduled for October 7, 2003, Los Angeles County has mailed out  
5 332,900 absentee ballots and already received back 41,796 absentee ballots cast by voters. Absentee  
6 voters have called my office to express concern and confusion as to whether they will need to vote again  
7 should the recall election be postponed until March.

8 12. In terms of costs of the election, Los Angeles County has already incurred more than  
9 50% of the costs of the recall election or approximately \$7,000,000 as 3.85 million sample ballots have  
10 been printed and mailed, all official ballots and election supplies have been purchased, hundreds of  
11 thousands of absentee ballots have been printed and mailed and hundreds of additional temporary  
12 employees were hired and have been working for weeks to prepare the myriad tasks associated with  
13 conducting a statewide election.

14 13. On Tuesday, September 16, 2003, I made a televised public presentation to the Los  
15 Angeles County Board of Supervisors on the problems associated with delaying the election to March  
16 2004. Attached hereto is a true and correct copy of the transcription of my public presentation to the  
17 Board.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
19 true and correct. Executed this 17th day of September, 2003, at Norwalk, California.

20  
21   
22 CONNY B. MCCORMACK

COUNTY OF LOS ANGELES

# THE BOARD of SUPERVISORS

CALIFORNIA

**First  
District**



**Gloria  
Molina**

**Second  
District**



**Yvonne  
Brathwaite  
Burke**

**Third  
District**



**Zev  
Yaroslavsky**

**Fourth  
District**



**Don  
Knabe**

**Fifth  
District**



**Michael D.  
Antonovich**

**The Preliminary Transcript  
of the Meeting of  
The Los Angeles County  
Board of Supervisors**

**The Preliminary Transcript of the Meeting of  
The Los Angeles County Board of Supervisors**

1 LEADERSHIP ROLE, THE KIND OF EFFORT, THE KIND OF DEDICATION  
2 THAT YOU HAVE HAD. THESE ARE THE MOST HELPLESS OF CREATURES IN  
3 OUR COMMUNITY, AND IT'S ALWAYS SO NICE TO SEE PEOPLE WHO ARE  
4 DEDICATED TO TAKING CARE OF ALL OF OUR ANIMALS.  
5 CONGRATULATIONS, DOCTOR. THANK YOU SO MUCH. [ Applause ]

6

7 **SUP. MOLINA:** YOU'VE GOT YOUR WIFE WITH YOU.

8

9 **SPEAKER:** THANK YOU VERY MUCH, SUPERVISOR MOLINA. I'D LIKE TO  
10 ACKNOWLEDGE THE EXCELLENT WORK OF THE DEPARTMENT, ESPECIALLY  
11 THE DIRECTOR, DR. ZEBALA, AND, OF COURSE, MY WIFE, EVELYN.  
12 THANK YOU SO MUCH. [ Applause ]

13

14 **SUP. KNABE:** SUPERVISOR MOLINA, ARE YOU FINISHED? OKAY. BEFORE  
15 WE GO INTO THE REGULAR AGENDA, I'M GOING TO ASK THAT OUR  
16 REGISTRAR RECORDER, CONNIE McCORMICK, IF SHE WOULD COME  
17 FORWARD TO GIVE US AN UPDATE ON THE IMPACT, THE POTENTIAL  
18 IMPACT OF THE JUDGE'S DECISION AS IT RELATES TO ON THE 7  
19 ELECTION. IS CONNY STILL HERE?

20

21 **SUP. YAROSLAVSKY:** MR. CHAIRMAN, WHILE WE'RE WAITING FOR CONNY,  
22 I'D LIKE TO ASK THAT WE ADJOURN IN MEMORY OF FLORA CHAVEZ, A  
23 COMMUNITY ACTIVIST AND DIRECTOR OF THE WEST SIDE BRANCH,  
24 COMMUNITY SERVICE ORGANIZATION. FLORA DEDICATED HER LIFE TO  
25 HELPING THE POOR, THE HUNGRY, AND THE HOMELESS IN OUR PART OF

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**The Preliminary Transcript of the Meeting of  
The Los Angeles County Board of Supervisors**

1 THE COUNTY. SHE SUCCUMBED TO CANCER. SHE WAS AT THE FOR FRONT  
2 OF THE CIVIL RIGHTS MOVEMENT TO ACHIEVE SOCIAL AND ECONOMIC  
3 JUSTICE. SHE WILL BE GREATLY MISSED BY THOSE SHE HELPED AND  
4 THOSE SHE INSPIRED TO HELP OTHERS. SHE'S SURVIVED BY HER  
5 DAUGHTERS, KATHY, KAY LEN, FOUR GRANADA CHILDREN AND TWO GREAT  
6 GRANDCHILDREN.

7

8 **SUP. KNABE:** SO ORDERED. ZEV, SINCE YOU'RE FIRST UP, WHY DON'T  
9 YOU PROCEED. I KNOW YOU HAVE SEVERAL QUESTIONS, AS WE ALL DO.

10

11 **SUP. YAROSLAVSKY:** MR. CHAIRMAN, THANK YOU. I ASK CONNY LAST  
12 NIGHT IF SHE WOULD COME DOWN THIS MORNING AND GIVE US A  
13 REPORT, BECAUSE I READ A REPORT FROM HER ON THE INTERNET THAT,  
14 WHEN ASKED WHETHER -- I THINK THE QUOTE WAS SOMETHING TO THE  
15 EFFECT, NOBODY HAS ASKED L.A. COUNTY, THE BIGGEST COUNTY IN  
16 CALIFORNIA, WHETHER, IN THE LIGHT OF THE NINTH CIRCUIT COURT  
17 OF APPEALS DECISION, POST PONG THE ELECTION UNTIL PERHAPS  
18 MARCH, WHETHER WE HAVE THE CAPACITY TO RUN THAT ELECTION IN  
19 MARCH, AND YOU WERE QUOTED AS SAYING THE ANSWER IS NO, AND  
20 CALLED YOU YESTERDAY TO CONFIRM THAT THAT WAS AN ACCURATE  
21 QUOTE, AND IT WAS, SO AFTER I ENDED THE APOPLEXY ATTACK I HAD,  
22 I WANTED TO HEAR FROM YOU, WHAT IS THE IMPACT OF THIS  
23 DECISION, WHAT ARE YOUR PLANS, WHAT ARE YOUR OPTIONS, AND I  
24 GUESS LATER WE'RE GOING TO HAVE A DISCUSSION IN CLOSED  
25 SESSION, BUT I REALLY HAVE TO ASK THE QUESTION IN OPEN

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**The Preliminary Transcript of the Meeting of  
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1 SESSION, IS THERE ANY ROLE FOR US FROM A LEGAL POINT OF VIEW,  
2 BOTH TO PROTECT OURSELVES AND OUR CONSTITUENTS AND OUR VOTERS?  
3 SO THOSE ARE -- THEN TAKE IT WHEREVER YOU WANT TO TAKE IT.

4

5 **CONNY McCORMICK:** THANK YOU, SUPERVISOR, AND ALL SUPERVISORS.  
6 THOSE QUOTES WERE CORRECT, AND I WOULD LIKE TO GIVE SOME  
7 CONTEXT BECAUSE IT'S ALMOST TWO WEEKS TO THE DAY THAT THE  
8 SECRETARY OF STATE TWO YEARS AGO DECERTIFIED --

9

10 **SUP. YAROSLAVSKY:** MR. CHAIRMAN, COULD I JUST ASK YOU TO KEEP  
11 ORDER IN THE ROOM?

12

13 **CONNY McCORMICK:** PUNCH-CARD SYSTEM WAS DECERTIFIED. THROUGHOUT  
14 THIS PROCESS, OVER TWO YEARS, THE COUNTY OF LOS ANGELES HAS  
15 NOT BEEN A PARTY, AND NO OTHER COUNTY HAS BEEN A PARTY TO  
16 THESE LAWSUITS, WHICH IS A HUGE DISCONNECT BETWEEN THE  
17 CAPABILITY OF ADMINISTERING AN ELECTION AND THE VENUE THAT WAS  
18 CHOSEN FOR THE LAWSUITS, AND SO I THINK IT HAD SOME IMPACT ON  
19 WHERE WE ARE TODAY, IS THAT NO ONE HAS BROUGHT THE -- INTO THE  
20 LAWSUIT THE COUNTIES, AND IN TERMS OF LOS ANGELES COUNTY, AS  
21 YOU KNOW, WE HAVE TO, BY THESE FEDERAL COURT RULES THAT WERE  
22 RULED IN 2002, CHANGE OUR VOTING SYSTEM BY NEXT MARCH, AND AS  
23 YOU ALWAYS NO, LAST YEAR, LAST AUGUST, THE BOARD CHOSE THE  
24 DIRECTION WE WERE GOING IN, WHICH IS A SIMILAR SYSTEM, IT'S  
25 CALLED INK ABOUT, IT'S SIMILAR TO THE PUNCH-CARD SYSTEM, IN

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**The Preliminary Transcript of the Meeting of  
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1 THAT IT HAS A BALLOT DEVICE, AND YOU'VE SEEN THIS, AND A PUNCH  
2 -- A BALLOT CARD THAT IS PUT INTO THE DEVICE IN A VERY SIMILAR  
3 FASHION TO THE PUNCH-CARD, BUT INSTEAD OF A PUNCHING TOOL AND  
4 PUTTING A HOLE IN THE CARD, IT HAS AN INKING STYLIST THAT YOU  
5 MAKE THE MARKS IN INK ON YOUR CHOICES, AND THIS TYPE OF A  
6 SYSTEM IS JUST LIKE OUR PUNCH-CARD SYSTEM FOR 35 YEARS, HAS A  
7 LIMITED BALLOT CAPACITY. WE'VE NEVER EXCEEDED THAT BALLOT  
8 CAPACITY. IT CAN HOLD HUNDREDS AND HUNDREDS OF CANDIDATES, BUT  
9 TO SUPER IMPOSE A RECALL ELECTION WITH 135 CANDIDATES, WHICH  
10 IS TAKING UP EIGHT PAGES IN THE CURRENT OCTOBER 7 ELECTION,  
11 WITH A 12-PAGE CAPACITY, WE CANNOT RUN A PRIMARY ELECTION FOR  
12 THE PRESIDENT, FOR CONGRESS, FOR THE BOARD OF SUPERVISORS, FOR  
13 THE STATE ASSEMBLY, ALL THE JUDGES, ALL THE BALLOT MEASURES ON  
14 FOUR ADDITIONAL PAGES. I MEAN, WE WOULD JUST RUN OUT OF BALLOT  
15 CAPACITY. THEREFORE, WE'D HAVE TO CONFRONT WHAT WE WERE GOING  
16 TO DO WITH THE VOTERS TO HAVE THE RECALL ON THE SAME ELECTION.  
17 ANOTHER COMPLICATION --

18

19 **SUP. YAROSLAVSKY:** THEY WILL JUST UNDERSTAND. THE CAPACITY  
20 LIMITATION IS NOT, THEN, THE NUMBER OF CANDIDATES, PER SE, BUT  
21 IT'S THE NUMBER OF PAGES IN WHICH YOU CAN FIT HOWEVER MANY  
22 RACES THERE ARE.

23

24 **SPEAKER:** THAT'S CORRECT.

25

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**The Preliminary Transcript of the Meeting of  
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1 SUP. YAROSLAVSKY: AND THAT UPPER LIMIT IS 12 PAGES.

2

3 SPEAKER: THAT'S CORRECT.

4

5 SUP. YAROSLAVSKY: AND THIS IS TAKING EIGHT PAGES.

6

7 SPEAKER: AT LEAST 7.

8

9 SUP. YAROSLAVSKY: AND BECAUSE THAT'S THE ONLY THING ON THE  
10 ABOUT THE IN OCTOBER, YOU ARE WELL WITHIN THE CAPACITY TO RUN  
11 IT UNDER EITHER SYSTEM, BUT IN MARCH, YOU HAVE ALL THE OTHER  
12 ELECTIONS WHICH WOULD TAKE YOU OVER THE 12 PAGES. IS THAT  
13 CORRECT?

14

15 SPEAKER: THAT'S CORRECT, AND THAT'S A MAJOR PROBLEM FOR LOS  
16 ANGELES AND POTENTIALLY FOR SACRAMENTO. OTHER COUNTIES THAT  
17 HAVE MOVED INTO FULL TOUCH SCREEN DEVICES OR HAVE, LIKE, IN  
18 THE CASE OF ORANGE COUNTY IS PLANNING ON USING THIS LARGE  
19 SCALE OPTICAL SCAN BALLOT, THIS IS THEIR RECALL BALLOT OF --  
20 WOULD HAVE TO FIND A MULTIPLE-PAGE-TYPE CAPACITY WITH ALL THE  
21 SOFTWARE AND ALL THE EQUIPMENT. WE DON'T HAVE THAT EQUIPMENT.  
22 WE HAVE THIS SYSTEM, AND WE'VE RECONSTITUTED OUR PUNCH-CARD  
23 BALLOT TABULATING DEVICES, AND THAT WAS THE REASON, AS YOU  
24 KNOW, TO SAVE MONEY, TO HAVE AN INTERIM SYSTEM IN THE NEXT TWO  
25 YEARS UNTIL WE CAN GET A HUNDRED MILLION DOLLARS TO BUY A

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**The Preliminary Transcript of the Meeting of  
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1 TOUCH SCREEN SYSTEM. THE COST OF THIS SYSTEM FOR THIS INTERIM  
2 TIME PERIOD WAS UNDER \$3 MILLION, SO IT WAS A MINIMAL  
3 EXPENDITURE IN THE SCHEME OF THINGS. THE OTHER MAJOR  
4 COMPLEXITY OF TRYING TO OVERLAY A RECALL ELECTION ON TOP OF A  
5 PRIMARY ELECTION IS IN A PRIMARY ELECTION, THE VOTERS HAVE TO  
6 COME IN AND DECLARE THEIR POLITICAL PARTY, AND YOU KNOW IN  
7 CALIFORNIA, WE HAVE SEVEN POLITICAL PARTIES, AND SO THERE ARE  
8 SEVEN DIFFERENT KINDS OF BALLOTS. AND THEY'RE COLOR-CODED,  
9 DEMOCRAT, REPUBLICAN, LIBERTARIAN, ET CETERA, AND THE VOTER  
10 DECLARES THEIR -- AND THE POLLWORKER KNOWS WHAT THEIR PARTY  
11 IS. THEY WOULD THEN ISSUE THAT PARTY, WHICH IS ALWAYS A  
12 CONFUSION TO THE VOTER, IT'S ALL THE THE MOST DIFFICULT  
13 ELECTION. THIS RECALL ELECTION IS A GENERAL ELECTION. MOST  
14 PEOPLE DON'T KNOW THE DIFFERENCE. THEY ARE POLITICAL  
15 CANDIDATES RUNNING IN A PARTY BALLOT. THEN YOU'D HAVE SOME  
16 SORT OF ANOTHER BALLOT FOR THEM, WHETHER OR NOT IT COULD BE  
17 ANOTHER ONE OF THESE, AND WE COULD POSSIBLY BUY MORE DEVICES  
18 AND POSSIBLY FIND A WAY TO GET OUR SOFTWARE RECERTIFIED AND  
19 RECONFIGURED TO COUNT TWO BALLOTS, OR WHETHER OR NOT WE'D HAVE  
20 TO GO TO A SEPARATE TYPE OF SYSTEM FOR THE RECALL. I'M JUST  
21 THINKING IN TERMS OF THE VOTER CONFUSION OF COMING IN. THEY'VE  
22 NEVER SEEN THIS SYSTEM ANYWAY, SO ALREADY THERE'S A CHANGE,  
23 AND THEN LAYING ON THE RECALL ELECTION ON TOP OF THAT  
24 COMPLICATED PRIMARY ELECTION IS GOING TO CREATE AT LEAST, I  
25 WOULD THINK IN ALL VOTERS' MIND, SOME QUESTIONS AND SOME

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1 CONFUSION, AND COMPARED TO THE PUNCH-CARD, WHICH WE'VE BEEN  
2 USING FOR 35 YEARS AND A HUNDRED MILLION BALLOTS HAVE BEEN  
3 COST ON IT WITHOUT INCIDENT HERE, AND SO THIS IS WHAT WE'RE  
4 CONFRONTING.

5

6 **SUP. MOLINA:** BUT MISS McCORMICK, IT BEGS THE QUESTION, WHAT  
7 WOULD HAVE HAPPENED HAD THIS INITIATIVE -- HAD THIS RECALL  
8 QUALIFIED FOR THE MARCH BALLOT?

9

10 **SPEAKER:** WE WOULD HAVE BEEN IN THE SAME SITUATION, SO WE WOULD  
11 HAVE HAD --

12

13 **SUP. MOLINA:** BUT IT WOULD HAVE BEEN SOMETHING THAT WE WOULD  
14 HAVE TO REORGANIZE IN ORDER TO CARRY OUT.

15

16 **SPEAKER:** THAT'S CORRECT, AND WE WILL HAVE TO AGAIN IF IT  
17 CONTINUES THIS MARCH, THAT'S CORRECT.

18

19 **SUP. KNABE:** YOU'RE TALKING ABOUT A SEPARATE DEVICE. WOULD THE  
20 VOTER HAVE TO MOVE, THEN, POTENTIALLY TO ANOTHER PARTITIONED  
21 AREA IF YOU HAD TO SEPARATE THE RECALL FROM THE NORMAL  
22 PRIMARY?

23

24 **SPEAKER:** I WOULD THINK NOT. I THINK WE COULD GO IN THE SAME  
25 BOOTH, AND WHETHER YOU HAD TWO OF THESE OR WHETHER YOU ISSUED

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1 SOMETHING LIKE THIS AND ONE OF THESE, THEY'D GO INTO ONE  
2 BOOTH. I DON'T THINK THAT IS GOING TO BE A PROBLEM, BUT  
3 CLEARLY, KEEPING ALL OF THIS SEPARATE WILL BE A CHALLENGE.

4

5 **SUP. YAROSLAVSKY:** SO THE ANSWER TO THE QUESTION, CAN YOU RUN  
6 AN ELECTION, A RECALL ELECTION AND THE OTHER ELECTIONS IN  
7 MARCH, THE ANSWER IS "YES," YOU JUST CAN'T DO IT WITH THE ONE  
8 SYSTEM THAT YOU HAD IN MIND.

9

10 **SPEAKER:** WITH THE SYSTEM THAT WE'RE PLANNING TO USE IN MARCH,  
11 IT IS A BALLOT CAPACITY ISSUE. CLEARLY, IF WE HAVE TO RUN IT,  
12 WHETHER IT'S ON A PAPER BALLOT OR ANYTHING ELSE FOR THE  
13 ELECTION, WE WOULD HAVE TO DO THAT, AND WE WOULD DO IT, BUT  
14 THE -- RIGHT NOW WE DON'T HAVE A SYSTEM THAT WOULD DO THAT, WE  
15 DON'T OWN ANY OF THE EQUIPMENT, WE DON'T HAVE ANY CAPACITY TO  
16 DO IT AT THIS VERY MOMENT.

17

18 **SUP. YAROSLAVSKY:** WHAT WOULD YOUR RECOMMENDATION BE, MAYBE  
19 THIS IS TOO PREMATURE TO ASK, BUT WHAT WOULD BE YOUR  
20 RECOMMENDATION, IF YOU HAD TO HAVE AN ELECTION IN MARCH,  
21 RECALL, OTHER THINGS, CONSOLIDATED, HOW WOULD YOU ADDRESS IT?  
22 WOULD YOU DO IT WITH THAT ORANGE COUNTY TYPE OF THING?

23

24 **SPEAKER:** ALL OF THE SOFTWARE AND ALL OF OUR TABULATION  
25 SYSTEMS, AND I WOULDN'T WANT TO SAY RIGHT NOW, I THINK YOU'D

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1 WANT A FULL RANGE OF OPTIONS BROUGHT TO YOU, AND I'D LIKE TO  
2 YOU TO DO THAT.

3

4 **SUP. YAROSLAVSKY:** WHAT IS THE RANGE OF COST THAT YOU'RE  
5 LOOKING AT?

6

7 **SPEAKER:** THE COST, AT THIS POINT, WE HAVEN'T HAD AN  
8 OPPORTUNITY TO EXPLORE WHAT THOSE COSTS WOULD BE IN THE 24  
9 HOURS THAT WE'VE BEEN AWARE OF THIS SITUATION, BUT AGAIN, I  
10 WOULD LIKE TO BRING YOU ALL OF THAT IN AN ORGANIZED FASHION SO  
11 YOU'D KNOW WHAT WE'RE LOOKING AT AND HOW --

12

13 **SUP. KNABE:** AS IT RELATES TO A MORE IMMEDIATE QUESTION, WHAT  
14 SHOULD THE VOTERS DO OUT THERE RIGHT NOW THAT HAVE THIS  
15 ABSENTEE BALLOT REQUEST IN THEIR HANDS?

16

17 **SPEAKER:** I'M GLAD YOU ASKED THAT QUESTION, BECAUSE THE  
18 SECRETARY OF STATE HAS STATED THAT ALL ABSENTEE VOTERS IN THE  
19 STATE SHOULD CONTINUE TO MAIL IN THEIR ABSENTEE BALLOTS,  
20 SHOULD CONTINUE THE PROCESS, BECAUSE WE ARE UNDER A STAY OF  
21 THE COURT DECISION FOR THE NEXT NOW SIX DAYS, AND I THINK IT  
22 IS CONFUSING TO THE VOTER WHO IS OUT THERE. WE'VE ALREADY  
23 RECEIVED 40,000 ABSENTEE BALLOTS BACK THAT HAVE BEEN VOTED  
24 ALREADY, THEY ARE UNDER LOCK AND KEY, WE NEVER COUNT THEM  
25 UNTIL ELECTION DAY, SO I WANTED TO ASSURE EVERYONE THAT THEY

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1 ARE SECURE AND THERE'S NOT A PROBLEM, BUT WE'VE MAILED OUT  
2 291,000 ALREADY, AND WE HAVE 60,000 MORE THAT ARE READY TO GET  
3 MAILED OUT, SO WE'VE BEEN TOLD WHERE TO CONTINUE IN TERMS OF  
4 THE ELECTION COSTS, WE HAVE INCURRED MORE THAN 50% OF THE  
5 COSTS OF THE ELECTION ALREADY WITH THE SAMPLE BALLOTS IN THE  
6 MAIL.

7

8 **SUP. KNABE:** SO IF IT WAS DELAYED, THEN, IN FACT, THAT WOULD BE  
9 A NONREIMBURSABLE EXPENSE? I MEAN, WHAT COSTS HAVE YOU -- I  
10 MEAN, I KNOW IT'S ONLY BEEN 24 HOURS, BUT WHAT COSTS HAVE YOU  
11 INCURRED, SHOULD THE ELECTION BE DELAYED THAT WE WOULD BE EVEN  
12 MORE -- MONEY SPENT THAT WE'LL NEVER GET BACK?

13

14 **SPEAKER:** WE'RE ESTIMATING AT THIS POINT AT LEAST \$7 MILLION  
15 THAT'S BEEN SPENT, AND THAT'S MONEY FOR THE SAMPLE BALLOTS,  
16 MAILING OF THE SAMPLE BALLOTS, ALL OF THE ELECTION SUPPLIES,  
17 ALL OF THE TEMPORARY STAFFING TO PUT TOGETHER THE ELECTION,  
18 ASSEMBLE THE EQUIPMENT, ALL OF THE ABSENTEE BALLOTS THAT HAVE  
19 GONE OUT AND ARE GOING OUT, ALL THE TEMPORARY STAFF THAT'S  
20 BEEN WORKING SEVEN DAYS A WEEK DOUBLE SHIFTS. AGAIN, WE HAVE  
21 TO CONTINUE THAT OVER THE NEXT SIX DAYS, BY COURT ORDER. SO  
22 USUALLY THE COST OF THE ELECTION, ONLY 10 TO 15% IS INCURRED  
23 ON ELECTION DAY. MOST PEOPLE DON'T REALIZE THAT. MOST OF THE  
24 COSTS OF THE ELECTION IS IN THE PREPARATION AND UP-FRONT COSTS  
25 OF THE ELECTION.

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1

2 **SUP. ANTONOVICH:** WHAT PERCENTAGE ARE GOING TO BE ABSENTEE  
3 BALLOTS?

4

5 **SPEAKER:** STATE-WIDE, AS FAR AS 30 TO 35%.

6

7 **SUP. ANTONOVICH:** AND REQUEST FOR ACTEEDD ARE HIGHER THAN AT  
8 PRESIDENTIAL?

9

10 **SPEAKER:** THEY'RE HIGHER THAN PRESIDENTIAL. WE'VE HAD OVER  
11 350,000 REQUESTS.

12

13 **SUP. ANTONOVICH:** AND A PERSON WHO VOTES ABSENTEE VOTES PUNCH-  
14 CARD.

15

16 **SPEAKER:** THEY'VE ALREADY VOTED ON THE PUNCH-CARD, CORRECT.

17

18 **SUP. ANTONOVICH:** SO THEY VOTE ON A PUNCH-CARD, THAT'S A  
19 TRADITIONAL WAY OF ABSENTEE BALLOTS IN THE STATE. POPULARITY  
20 OF ABSENTEE BALLOTS HAVE INCREASED, NOT DECREASED, AND WHAT  
21 THE COURT IS SAYING IS THAT THE PEOPLE ARE TOO STUPID TO VOTE  
22 THE WAY THEY VOTE ABSENTEE IN A POLLING BOOTH BECAUSE THEY ARE  
23 UNABLE TO READ OR FOLLOW DIRECTIONS OR PUNCH A HOLE, WHICH IS  
24 JUST LUDICROUS, AND, YOU KNOW, WE'VE HAD PUNCH-CARD ELECTIONS  
25 THROUGHOUT THE HISTORY OF THIS STATE, SINCE I WAS BORN, IN LOS

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1 ANGELES COUNTY, AND I SEE IT AS AN ATTEMPT TO STOP THE  
2 DEMOCRATIC PROCESS IN CARRYING OUT THE ELECTION.

3

4 **SUP. YAROSLAVSKY:** I HATE TO CORRECT YOU, MR. ANTONOVICH,  
5 YOU'RE NOT THAT YOUNG. YOU'RE OLD ENOUGH TO REMEMBER THE  
6 PREVIOUS SYSTEM, I GUARANTEE YOU, BECAUSE I CAN REMEMBER IT.

7

8 **SUP. ANTONOVICH:** WELL, YOU'RE NOT THAT YOUNG EITHER, THEN.

9

10 **SUP. YAROSLAVSKY:** THAT'S RIGHT. [ Laughter ]

11

12 **SUP. YAROSLAVSKY:** THAT'S MY POINT.

13

14 **SUP. KNABE:** RECALL ELECTION TO TELL ABOUT PEOPLE'S BIRTHDAYS.

15

16 **SUP. YAROSLAVSKY:** CONNY, IF YOU HAVE TO GO TO A SYSTEM IN  
17 WHICH YOU HAVE TWO DIFFERENT SYSTEMS TO VOTE, IS IT YOUR  
18 FEELING THAT THAT WOULD CAUSE CONFUSION AMONG OUR -- POTENTIAL  
19 CONFUSION AMONG OUR VOTERS?

20

21 **SPEAKER:** I THINK IT'S LOGICAL TO ASSUME THAT IT WOULD BECAUSE,  
22 AGAIN, WE HAVE USED THE SAME SYSTEM FOR 35 YEARS IN THIS  
23 COUNTY, PEOPLE ARE FAMILIAR WITH IT. THERE'S USUALLY ONLY 2 OR  
24 3% NEW VOTERS, AND PEOPLE ARE FAMILIAR WITH IT, AND NOW WE'RE  
25 LOOKING AT 100% OF THE VOTERS WHO ARE UNFAMILIAR WITH THE

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1 SYSTEM, AND IT'S NOT LARGE ENOUGH TO HOLD ALL THE RACES, SO  
2 WE'RE GOING TO HAVE TO LOOK AT WHAT OTHER SUPPLEMENTAL SYSTEM  
3 TO BRING IN AND GIVE YOU A RANGE OF OPTIONS. I THINK IT'S NOT  
4 -- I THINK IT WOULD JUST BE LOGICAL TO ASSUME THAT THIS IS  
5 GOING TO BE CONFUSING, AND NO MATTER HOW MUCH VOTER OUTREACH,  
6 AND, OF COURSE, WE WILL DO AS MUCH AS WE CAN, WE'RE LOOKING AT  
7 MILLIONS OF VOTERS CONFRONTING SOMETHING NEW FOR THE FIRST  
8 TIME.

9

10 **SUP. YAROSLAVSKY:** IS IT CONCEIVABLE THAT VOTERS IN LOS ANGELES  
11 COUNTY CONFRONTED IN MARCH WITH TWO DIFFERENT SYSTEMS IN THE  
12 SAME POLLING BOOTH OR IN SEPARATE POLLING BOOTHS, THAT THERE  
13 MIGHT BE SOME VOTES THAT WOULDN'T BE COUNTED AS A RESULT OR  
14 THAT THERE WOULD BE SOME KIND OF A -- YOU WANT TO CALL IT AN  
15 ERROR RATE OR SLIPPAGE RATE AS A RESULT OF THE CONFUSION?

16

17 **SPEAKER:** I THINK THERE'S BEEN A LOT OF TALK ABOUT WHAT AN  
18 ERROR RATE IS IN AN ELECTION, AND IT'S REALLY NOT AN ERROR  
19 RATE. THE SUPPOSITION IS THAT IF PEOPLE SKIP A RACE AND DON'T  
20 VOTE FOR THAT, THAT THAT'S AN ERROR, THAT'S PART OF THE COURT  
21 PLEADINGS, AND I WOULD CONTEND THAT A LOT OF VOTERS WANTED TO  
22 SKIP THAT RACE, AND YOU HAVE NO WAY OF KNOWING BECAUSE OF  
23 SECRET BALLOT, YOU CAN'T GO AND ASK THAT PERSON, "WHY DID YOU  
24 SKIP THAT RACE?" YOU'LL NEVER KNOW THAT, WHETHER IT WAS

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1 INTENTIONAL OR BECAUSE THE WAY THE BALLOT WAS LAID OUT OR HAD  
2 A PROBLEM WITH PUNCHING DOWN THROUGH THE BALLOT CARD.

3

4 **SUP. YAROSLAVSKY:** ARE YOU SAYING THAT THE COURT OF APPEALS --  
5 OR THE PLEADINGS BEFORE BOTH THE DISTRICT COURT AND THE COURT  
6 OF APPEALS BUY THE PLAINTIFFS ASSUME THAT ANY TIME THERE WAS A  
7 RACE THAT WAS SKIPPED, THAT THERE WAS NO PUNCH OUT, THAT IS  
8 CONSTRUED AS AN ERROR?

9

10 **SPEAKER:** THAT'S CORRECT. IN THE PAPERS, THAT'S CONSIDERED AN  
11 ERROR.

12

13 **SUP. YAROSLAVSKY:** SO WHAT I READ IN THE PAPERS TODAY ABOUT THE  
14 DECISION THAT 40,000 PEOPLE WILL BE DISENFRANCHISED AS A  
15 RESULT OF THESE SYSTEMS -- OR THIS SYSTEM, THAT THAT INCLUDES  
16 PEOPLE WHO DECIDED THEY DIDN'T WANT TO VOTE FOR THEIR  
17 CONGRESS, CONGRESSIONAL ELECTION --

18

19 **SPEAKER:** THAT'S CORRECT. THEY CONSIDER THE ERROR RATE A  
20 RESIDUAL VOTE RATE OF THOSE PEOPLE WHO VOTE FOR MORE THAN ONE  
21 CANDIDATE IN A RACE, SO THAT'S AN OVER VOTE, WHICH IS OFTEN AN  
22 INTENTIONAL EXPRESSION AS WELL, OR UNDERVOTE FOR SOMEONE WHO  
23 JUST DIDN'T VOTE. THEY EXTRAPOLATE THAT ON THE TOP OF THE  
24 BALLOT, THEY COMBINE THE TWO. DIFFERENT VOTING SYSTEMS HAVE  
25 THE TOUCH SCREEN. YOU'RE NOT ALLOWED TO OVERVOTE. IT WILL NOT

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1 ALLOW YOU TO VOTE FOR TWO CANDIDATES, SO IT PREVENTS THE  
2 OVERVOTING, WHICH MAY OR MAY NOT BE INTENTIONAL BEHAVIOR, BUT  
3 IT DOESN'T PREVENT THE OVER-VOTING. IT DOES REMIND YOU AT THE  
4 END OF THE VOTING THAT YOU HAVE SKIPPED THAT RACE SO THAT IF  
5 WAS UNINVENTIONAL, YOU CAN GO BACK AND MAKE THAT CHANGE,  
6 RATHER THAN THIS SYSTEM DOESN'T REMIND YOU TO DO THAT. THE  
7 DIFFERENCES OF THAT RESIDUAL VOTE RACE BETWEEN SCREEN AND  
8 PUNCH-CARD IS LESS THAN 1%.

9

10 **SUP. YAROSLAVSKY:** IS IT CONCEIVABLE, THEN, GOING BACK TO MY  
11 QUESTION, BECAUSE IF WE'RE FORCED TO GO INTO A MARCH  
12 SITUATION, IS IT CONCEIVABLE THAT WE WOULD HAVE -- THAT THE  
13 CONFUSION THAT YOU DESCRIBED EARLIER COULD LEAD TO PEOPLE  
14 INADVERTENTLY VOTING OR NOT VOTING OR OVER-VOTING OR NOT  
15 VOTING OR MISSING SOMETHING, BEING SOME SLIPPAGE --

16

17 **SPEAKER:** I THINK IT'S SPECULATION, BUT I THINK IT'S A  
18 SPECULATION THAT IS LOGICAL.

19

20 **SUP. YAROSLAVSKY:** WELL, WHAT DOES CONFUSION USUALLY LEAD TO?  
21 DOES IT LEAD TO PERFECTION OR IMPERFECTION?

22

23 **SPEAKER:** I THINK IMPERFECTION. RATHER THAN PROJECT ERRORS, I  
24 DON'T THINK WE CAN NECESSARILY PROJECT ANY PERCENTAGES, BUT I  
25 DO THINK THAT WE CAN SAY THAT PEOPLE WHO ARE CONFRONTED WITH

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1 SOMETHING THEY'VE NEVER SEEN BEFORE ARE GOING TO HAVE A HARDER  
2 TIME WITH IT, AND I THINK IT'S JUST LOGICAL TO ASSUME THAT  
3 THERE COULD BE PEOPLE WHO EITHER SKIP ONE OF THE ELECTIONS OR  
4 THE OTHER UNINTENTIONALLY OR ARE CONFUSED WITH THE PROCESS.

5

6 **SUP. YAROSLAVSKY:** SO THAT THE ART THAT WAS MADE THAT THE  
7 PEOPLE IN THE SIX COUNTIES -- LET'S JUST STICK TO OUR COUNTY  
8 FOR RIGHT NOW, WOULD NOT BE EQUALLY TREATED WITH THE OTHER  
9 COUNTIES THAT HAVE THE MORE MODERN EQUIPMENT, THAT COULD STILL  
10 BE THE CASE IN MARCH, EVEN UNDER A NEW SET OF RULES, BECAUSE  
11 WE WILL HAVE THIS SCREWY MITIGATION OF THE COURT'S DECISION TO  
12 DEAL WITH.

13

14 **SPEAKER:** I THINK YOU COULD TAKE THAT TO THE EXTREME AND SAY  
15 EVERYONE IN THE UNITED STATES VOTED ON THE SAME SYSTEM. EVERY  
16 SYSTEM IS A LITTLE DIFFERENT AND HAS THE SUPPOSED ERROR OR  
17 RESIDUAL RATES OF PEOPLE SKIPPING RACES OR OVERVOTING A RACE  
18 DIFFERENT. EVERY ONE OF THE SYSTEMS IS DIFFERENT, AND THERE  
19 ARE MANY SYSTEMS THAT ARE CERTIFIED FOR USE IN THIS COUNTRY  
20 AND IN CALIFORNIA, AND THE COUNTIES IN CALIFORNIA USE  
21 DIFFERENT SYSTEMS, SO EVERY ELECTION, DEPENDING ON WHAT SYSTEM  
22 YOU USE, THERE IS A DIFFERENCE IN HOW MANY PEOPLE SKIP A RACE  
23 OR DON'T OR OVERVOTE THE RACE OR DON'T, AND THAT'S BEEN PROVEN  
24 AND THERE ARE DOCUMENTED NUMBERS ON IT.

25

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1 SUP. YAROSLAVSKY: SO TO THE EXTENT THERE'S CONFUSION THAT  
2 LEADS TO SLIPPAGE IN A COUNTY LIKE OURS, WHICH, BY THE COURT'S  
3 CONCLUSION BY SELF-EVIDENCE, IS A MORE HEAVILY MINORITY COUNTY  
4 THAN SOME OF THE OTHER 56% OF THE VOTING POPULATION, WHICH WAS  
5 THE BASIS OF THIS -- ONE OF THE BASES OF THIS DECISION, THAT  
6 THE SLIPPAGE WILL OCCUR IN COUNTY HERE. I THINK THAT'S WHAT --

7

8 SPEAKER: AGAIN, IT'S VERY SPECULATIVE, BUT I THINK WE CAN SAY  
9 THAT IT'S A LOGICAL PROGRESSION OF WHAT WE'RE TALKING ABOUT.

10

11 SUP. YAROSLAVSKY: LAST TWO QUESTIONS HE HAVE. ONE IS, WHAT ARE  
12 THE OTHER COUNTIES, THE OTHER FIVE MAJOR COUNTIES THAT ARE AT  
13 ISSUE HERE DOING. DO YOU KNOW?

14

15 SPEAKER: YES, I DO. SACRAMENTO AND LOS ANGELES ARE THE TWO  
16 THAT ARE LOOKING AT THE SMALL BALLOT OPTICAL SCAN THAT LOOKS  
17 LIKE THIS SYSTEM. THE OTHERS, SAN BERNARDINO, SANTA CLARA, SAN  
18 DIEGO, AND OTHERS ARE GOING TO THE TOUCH SCREEN SYSTEM BY  
19 MARCH.

20

21 SUP. YAROSLAVSKY: OKAY. THE LAST QUESTION I HAVE, IS ANYBODY  
22 IN THIS CASE, EITHER SIDE, PLAINTIFFS OR DEFENDANTS, ASKED YOU  
23 FOR YOUR INPUT AS THE REGISTRAR RECORDER FOR THE LARGEST  
24 COUNTY IN CALIFORNIA?

25

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1 **SPEAKER:** THERE'S A FRIEND OF THE COURT GROUP THAT HAS ASKED ME  
2 TO DO THAT, BUT IN TERMS --

3

4 **SUP. YAROSLAVSKY:** RECENTLY?

5

6 **SPEAKER:** YES.

7

8 **SUP. YAROSLAVSKY:** SINCE YESTERDAY?

9

10 **SPEAKER:** YES.

11

12 **SUP. YAROSLAVSKY:** PRIOR TO YESTERDAY, HAS YOUR INPUT BEEN  
13 SOLICITED?

14

15 **SPEAKER:** A FRIEND OF THE COURT BRIEF THAT SACRAMENTO COUNTY  
16 DID, I WAS ASKED TO REVIEW THEIR FRIEND OF THE COURT BRIEF,  
17 WHICH I DID, AND ASSISTED IN EDITING IT, BUT A FRIEND OF THE  
18 COURT BRIEF IS NOT THE SAME AS BEING A PARTY TO THE LAWSUIT.

19

20 **SUP. YAROSLAVSKY:** WHAT I'M LEADING TO, AND MAYBE MR. PELLMAN  
21 CAN JUST MULL THIS OVER, IS IT SEEMS TO ME THIS INFORMATION  
22 SOMEHOW NEEDS TO GET BEFORE A COURT, OR THE COURT, OR SHOULD  
23 HAVE BEEN BEFORE THE COURT.

24

25 **SPEAKER:** I COULDN'T AGREE MORE.

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1

2 **SUP. YAROSLAVSKY:** AND THEY COULD HAVE MADE THE SAME DECISION  
3 AFTER HEARING WHAT MISS McCORMICK HAD TO SAY, AND PROBABLY  
4 WOULD HAVE MADE THE SAME DECISION, AS IN THE CASE OF THE NINTH  
5 CIRCUIT COURT, AND I'M SURE THE COURT WOULD HAVE MADE THE SAME  
6 DECISION, TOO, ABOUT SOMEHOW --

7

8 **SPEAKER:** I THINK WE HAVE TO GO BACK TWO YEARS AGO --

9

10 **SUP. YAROSLAVSKY:** HANG ON A SECOND. THE PEOPLE IN THE TRENCHES  
11 THAT ARE DOING THE WORK AND HAVE TO IMPLEMENT THE DECISION OF  
12 THE COURT, THEIR INPUT NEEDS NOT TO BE IMPLEMENTED, BUT NEEDS  
13 TO BE BEFORE THE COURT SO THEY CAN EVALUATE IT. OTHERWISE,  
14 IT'S A PROFESSOR FROM U.C. BERKELEY, GREAT SCHOOL,  
15 PONTIFICATING AND OPINING ABOUT WHAT HE THINKS THE IMPACT IS,  
16 AND SOME OTHER PROFESSOR OPINING THE OPPOSITE, AND NO  
17 REGISTRAR RECORDER HAS BEEN ASKED FOR THEIR OPINION, BUT WHO  
18 THE HELL AM I?

19

20 **SUP. KNABE:** PARTICULARLY THE LARGEST VOTING COUNTY IN THE  
21 AMERICA.

22

23 **SUP. YAROSLAVSKY:** SO I WOULD ASK YOU TO CONSIDER THAT WHEN WE  
24 GO INTO CLOSED SESSION, TO EVALUATE ALL THESE ISSUES, IF THERE

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1 IS A WAY TO DEAL WITH THAT ISSUE. IT MAY BE TOO LATE. I'M  
2 SORRY I CUT YOU OFF, CONNY. GO AHEAD.

3

4 **SPEAKER:** NO, I WAS CUTTING YOU OFF, SUPERVISOR. I COULDN'T  
5 AGREE MORE. THIS CASE, WHEN IT STARTED IN 2001, WE WERE  
6 ATTEMPTING TO BE -- WE WERE GOING TO BE -- IF THEY HAD A TRIAL  
7 IN JUDGE WILSON'S CASE, I WAS GOING TO BE THE LEAD BUSINESS,  
8 AND I DID AN EIGHT-HOUR DECLARATION AND THE JUDGE DETERMINED  
9 NOT TO HAVE A TRIAL AND RULED FROM THE BENCH, AND SUBSEQUENT  
10 COURT CASES, WE'VE NOT BEEN BROUGHT IN ON, AND WE WEREN'T  
11 BROUGHT IN ON THAT ONE, EITHER, BUT THEY WERE GOING TO ALLOW  
12 US TO TESTIFY, BUT THERE'S BEEN NO TESTIFYING, IT'S ALL BEEN -

13 -

14

15 **SUP. ANTONOVICH:** WON'T THERE BE AN ADMINISTRATIVE PROBLEM IF  
16 THE ELECTION WOULD BE IN MARCH AND THEN THE CLERK OF THE  
17 POLLING PLACE WOULD HAVE TO DETERMINE IF THAT PERSON HAD  
18 ALREADY VOTED? IF NOT, THEN YOU'D HAVE CHALLENGES CREATING  
19 MORE OF AN ADMINISTRATIVE NIGHTMARE?

20

21 **SPEAKER:** AT THIS POINT, SUPERVISOR, I REALLY CAN'T SAY UNTIL  
22 WE SEE WHAT THE COURTS ARE GOING TO DO WITH THIS AND THE  
23 BALLOTS THAT HAVE ALREADY BEEN CAST AND WHETHER OR NOT THEY'RE  
24 JUST GOING TO ALLOW THEM OR -- YOUR GUESS IS AS GOOD AS MINE  
25 AT THIS POINT.

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1

2 **SUP. ANTONOVICH:** SO IT REALLY CREATED A STATE OF CHAOS, AND  
3 WE'RE ALL IN LIMBO, A CATCH-22 POSITION.

4

5 **SPEAKER:** WELL, WE SEEM TO BE. WE ARE PROCEEDING IN THE NEXT  
6 SIX DAYS AS THE COURT HAS ORDERED THAT WE PROCEED WITH THE  
7 ELECTION, AND WE ARE DOING THAT.

8

9 **SUP. YAROSLAVSKY:** WHAT IS -- IF THERE'S ONE THING YOU WOULD  
10 WANT TO SAY TO ALL THESE REPRESENTATIVES OF THE PUBLIC, IF  
11 THERE WAS ONE WISH YOU HAD FOR THIS WHOLE THING AT THIS POINT  
12 IN TIME, AS THE REGISTRAR OF THE LARGEST COUNTY IN AMERICA,  
13 WHAT WOULD IT BE?

14

15 **SPEAKER:** I THINK I MIGHT HAVE ALREADY SAID IT.

16

17 **SUP. YAROSLAVSKY:** SAY IT AGAIN.

18

19 **SPEAKER:** I REALLY THINK THAT WE OUGHT TO BE THINKING ABOUT THE  
20 VOTER. I'M MOST CONCERNED ABOUT THE VOTER AND THE POTENTIAL  
21 DESTABILIZING EFFECT OF ALL OF THIS TURMOIL, NOT JUST FOR THIS  
22 ELECTION, BUT INTO THE FUTURE. I'M CONCERNED, WILL PEOPLE IN  
23 THE FUTURE NOT WANT TO MAIL IN THEIR ABSENTEE BALLOTS FOR  
24 OTHER ELECTIONS, THINKING THEY SHOULD WAIT UNTIL THE LAST  
25 MINUTE AND THEN WE DON'T GET THEM IN TIME. I MEAN, THERE'S

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1 JUST LOTS OF POTENTIAL REPERCUSSIONS DOWN THE LINE ON THE  
2 PEOPLE'S BELIEF IN THE ELECTORAL PROCESS, AND I THINK WE HAVE  
3 TO BE VERY CAREFUL ABOUT THAT, BECAUSE I THINK THAT'S BEEN,  
4 EVER SINCE NOVEMBER 2000, IT'S BEEN A LOT OF CONCERN ABOUT  
5 THAT, AND WE'VE DONE EVERYTHING WE CAN AND YOUR BOARD HAS DONE  
6 EVERYTHING WE CAN TO BE SURE THAT WE'RE COUNTING THE BALLOTS  
7 APPROPRIATELY, BUT NOW WE HAVE A LOT OF BALLOTS IN THIS  
8 ELECTION, PEOPLE ARE WONDERING, CALLING OUR OFFICES WONDERING  
9 WHAT THEY SHOULD BE DOING, AND I DON'T THINK THAT GOES AWAY  
10 AFTER THIS ISSUE IS RESOLVED, NECESSARILY. I THINK WE HAVE A  
11 LARGER CHALLENGE TO ASSURE PEOPLE THAT THE ELECTION PROCESS IS  
12 -- THERE'S A SANCTITY TO IT.

13

14 **SUP. YAROSLAVSKY:** YOUR VICE TO THE PUBLIC, THE VOTING PUBLIC  
15 IS TO CONTINUE TO PROCEED AS IF THE ELECTION IS STILL BEING  
16 HELD IN OCTOBER?

17

18 **SPEAKER:** THAT'S THE COURT'S ADVICE, THE SECRETARY OF STATE'S  
19 ADVICE AND I BELIEVE ALL OF YOU WOULD UP THE SAME. WE'RE IN  
20 LIMBO, BUT THEN WHAT WILL HAPPEN IN FIVE DAYS IS...

21

22 **SUP. YAROSLAVSKY:** ARE YOU AWARE WHETHER THE SECRETARY OF STATE  
23 HAS DECIDED TO APPEAL THE CASE?

24

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1 **SPEAKER:** I JUST GOT OFF THE PHONE BEFORE I WAS COMING. THAT'S  
2 WHY I WAS LATE. HE'S HAVING A PRESS CONFERENCE AT 2:00, AND HE  
3 HAS NOT REVEALED THAT AT THIS POINT.

4  
5 **SUP. KNABE:** ANYTHING ELSE?

6  
7 **SUP. ANTONOVICH:** LET ME ASK COUNTY COUNSEL. THE TWO OPTIONS  
8 WOULD BE FOR AN APPEAL DIRECTLY TO THE U.S. SUPREME COURT OR  
9 TO ASK FOR THE NINTH DISTRICT COURT TO MEET AND HOLD AND MAKE  
10 A DECISION. IF THEY WENT WITH THE NINTH DISTRICT TO MEET AS A  
11 WHOLE, WHAT IS A TIME FRAME FOR THAT?

12  
13 **COUNSEL PELLMAN:** I BELIEVE I SAW SOME INFORMATION IN THE LAST  
14 24 HOURS THAT INDICATED THIS WOULD HAVE TO BE DONE IN A VERY  
15 SHORT PERIOD, SUCH AS A WEEK.

16  
17 **SUP. ANTONOVICH:** ABOUT A WEEK?

18  
19 **COUNSEL PELLMAN:** WHICH WOULD, AT THE MOST EXPEDITIOUS,  
20 ADDITIONAL PERIOD OF TIME.

21  
22 **SUP. ANTONOVICH:** SO DOES THE TIME FRAME PERMIT THAT TYPE OF  
23 HEARING AND DECISION TO BE MADE PRIOR TO OCTOBER 7?

24

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1 COUNSEL PELLMAN: IT DOES, IF THE HEARING IS GOING TO BE HELD.  
2 IF THE NINTH CIRCUIT TAKES TIME TO REVIEW IT, TO DECIDE  
3 WHETHER TO HAVE AN IMBANK HEARING, IT'S HARD TO PREDICT  
4 WHETHER --

5  
6 SUP. ANTONOVICH: SO AN IMBANK'S HEARING TAKES A MINIMUM OF  
7 SEVEN DAYS, OR A MAXIMUM OF SEVEN DAYS?

8  
9 COUNSEL PELLMAN: THE INFORMATION I SAW THIS MORNING, I HAVEN'T  
10 CONFIRMED IT, IS IT IS GOING TO TAKE SEVEN DAYS FOR THE  
11 PROCESS TO TAKE PLACE WITH RESPECT TO AN IMBANK HEARING. THEN  
12 THE HEARING WOULD HAVE TO BE HELD, THAT DECISION WOULD ALSO BE  
13 SUBJECT TO REVIEW BY THE U.S. SUPREME COURT.

14  
15 SUP. ANTONOVICH: RIGHT.

16  
17 COUNSEL PELLMAN: I'VE ASKED JUDY WHITEHURST TO ADVISE US,  
18 McCORMACK'S OFFICE TO GET BACK TO US PRIOR TO THE POSTING OF  
19 JUSTICE.

20  
21 SUP. YAROSLAVSKY: I WOULD SO MOVE.

22  
23 SUP. KNABE: I WOULD SECOND. ANY OBJECTION? SO ORDERED.  
24 ANYTHING ELSE? ANY OTHER QUESTIONS? CONNY, THANK YOU, AND I  
25 KNOW THAT YOU'LL CONTINUE TO KEEP US ALL INFORMED AS IT

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1 RELATES TO THESE ISSUES, AND THANK YOU FOR BEING HERE THIS  
2 MORNING. ZEV, YOU'RE STILL UP ON SPECIALS. YOU DID YOUR  
3 ADJOURNMENTS.

4  
5 **SUP. YAROSLAVSKY:** LET'S TAKE UP ITEM NUMBER 10, AT LEAST FOR  
6 NOW. I THINK YOU AND MS. BURKE -- DO YOU WANT TO WAIT UNTIL  
7 MS. BURKE GETS BACK?

8  
9 **SUP. KNABE:** SHE HAS REQUESTED --

10

11 **SUP. YAROSLAVSKY:** LET'S HOLD IT UNTIL SHE COMES BACK.

12

13 **SUP. KNABE:** WHAT IF WE DO NUMBER 8 TEMPORARILY.

14

15 **SUP. YAROSLAVSKY:** ALL RIGHT.

16

17 **SUP. KNABE:** SUPERVISOR BURKE HAS REQUESTED THAT WE DO 10 AND  
18 21. ITEM NUMBER 8 WAS HELD FOR PETER BAXTER. CALL HIM FORWARD.

19

20 **PETER BAXTER:** MR. CHAIR -- CHAIRMAN, MEMBERS OF YOUR HONORABLE  
21 BOARD, MR. JANSSEN, LADIES AND GENTLEMEN, MY NAME IS PETER  
22 BAXTER, AND I LIVE IN LOS ANGELES. IT IS MY RESPECTFUL  
23 POSITION THAT I -- THAT YOU NAME A COUNTY COURTHOUSE IS, I  
24 BELIEVE -- I SINCERELY BELIEVE BEYOND OR WITHOUT THE AUTHORITY  
25 OF ANYBODY AT ALL AS BEING A POLITICAL ACTION WHEN THE EFFORT,

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1 **DECLARATION OF SERVICE**

2 STATE OF CALIFORNIA, County of Los Angeles:

3 Derek Stane states: I am and at all times herein mentioned have been a citizen of the United  
4 States and a resident of the County of Los Angeles, over the age of eighteen years and not a party  
5 to nor interested in the within action; that my business address is 648 Hall of Administration, City  
6 of Los Angeles, County of Los Angeles, State of California; that I am readily familiar with the  
7 business practice of the Los Angeles County Counsel for collection and processing of  
8 correspondence for mailing with the United States Postal Service; and that the correspondence would  
9 be deposited within the United States Postal Service that same day in the ordinary course of  
10 business.

11 That on the 17th day of September, 2003, I served the attached

12 **MOTION TO FILE AMICUS BRIEF; DECLARATION OF CONNY**  
13 **McCORMACK**

14 upon Interested Party(ies) by depositing copies thereof, enclosed in a sealed envelope and placed for  
15 collection and mailing on that date following ordinary business practices in the United States Postal  
16 Service, addressed as follows:

17 **(See Attached Service List)**

18  **(BY E-MAIL)** I hereby certify that this document was served by e-mailed transmission on  
19 the parties listed herein at their most recent e-mail address on See Attached Service List  
20 from Los Angeles, California.

21  **(BY MAIL)** I am "readily familiar" with this office's practice of collection and processing  
22 correspondence by mailing. Under that practice it would be deposited with U.S. postal  
23 service on that same day with postage fully prepaid at Los Angeles, California, in the  
24 ordinary course of business. I am aware that on motion of the party served, service is  
25 presumed invalid if postal cancellation date or postage meter date is more than one day after  
26 date of deposit for mailing in affidavit.  
27  
28

- 1  (BY FACSIMILE) I caused such document to be delivered via facsimile transmission to the
- 2 office of the addressee.
- 3  (BY PERSONAL DELIVERY - VIA SCM MESSENGER) I caused such envelope to be
- 4 delivered by hand to the office of the addressee.
- 5  (BY EXPRESS MAIL) I caused such envelope to be delivered by **Express Mail** to the
- 6 offices of the addressee.
- 7  (STATE) I declare under penalty of perjury under the laws of the State of California that the
- 8 above is true and correct.
- 9  (FEDERAL) I declare that I am employed in the offices of a member of this court at whose
- 10 direction the service was made.

11  
12 I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th  
13 day of September 2003, at Los Angeles, California.

14  
15   
16 Derek Stane

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## SERVICE LIST

Douglas S. Woods  
Susan Oie  
Bill Lockyer  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 944255  
Sacramento, CA 94244-2550  
**\*susan.oie@doj.ca.gov**

Attorneys for Defendant-Appellee

Robert M. Schwartz  
Charles P. Diamond  
Victor H. Jih  
O'MELVENY & MYERS  
1999 Avenue of the Stars, Ste. 700  
Los Angeles, CA 90067-6035  
**\*cdiamond@omm.com**

Attorneys for Applicant-Intervenor

Charles H. Bell, Jr.  
Thomas W. Hiltachk  
BELL, McANDREWS, HILTACHK & DAVIDIAN  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814  
**\*cbell@bmhlaw.com**

Attorneys for Applicant-Intervenor

Mark D. Rosenbaum  
ACLU  
1616 Beverly Boulevard  
Los Angeles, CA 90026-5752  
**\*www.aclu-sc.org**

Attorneys for Plaintiffs-Appellants

Honorable Stephen V. Wilson  
UNITED STATES DISTRICT COURT  
312 N. Spring Street, Courtroom 6  
Los Angeles, CA 90012  
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